UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

DIVISION OF
CORPORATION FINANCE

April 13, 2018

Chadwick L. Mills
Cooley LLP
cmills@cooley.com

Re: Cerus Corporation
Incoming letter dated February 6, 2018

Dear Mr. Mills:

This letter is in response to your correspondence dated February 6, 2018 and February 21, 2018 concerning the shareholder proposal (the "Proposal") submitted to Cerus Corporation (the "Company") by Michael Salzhauer (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. We also have received correspondence on the Proponent's behalf dated February 12, 2018 and February 26, 2018. Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Matt S. McNair
Senior Special Counsel

Enclosure

cc: Blair Axel
Benjamin Partners
baxel@benjaminpartners.com

April 13, 2018

Response of the Office of Chief Counsel
Division of Corporation Finance

Re: Cerus Corporation
Incoming letter dated February 6, 2018

The Proposal requests that the Company begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value.

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(3). We are unable to conclude that the Proposal, taken as a whole, is so vague or indefinite that it is rendered materially misleading. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(3).

We are unable to concur in your view that the Company may exclude the Proposal under rule 14a-8(i)(7). In arriving at this position, we note that the Proposal focuses on an extraordinary transaction. Accordingly, we do not believe that the Company may omit the Proposal from its proxy materials in reliance on rule 14a-8(i)(7).

Sincerely,

Caleb French
Attorney-Adviser

DIVISION OF CORPORATION FINANCE
INFORMAL PROCEDURES REGARDING SHAREHOLDER PROPOSALS

The Division of Corporation Finance believes that its responsibility with respect to matters arising under Rule 14a-8 [17 CFR 240.14a-8], as with other matters under the proxy rules, is to aid those who must comply with the rule by offering informal advice and suggestions and to determine, initially, whether or not it may be appropriate in a particular matter to recommend enforcement action to the Commission. In connection with a shareholder proposal under Rule 14a-8, the Division's staff considers the information furnished to it by the company in support of its intention to exclude the proposal from the company's proxy materials, as well as any information furnished by the proponent or the proponent's representative.

Although Rule 14a-8(k) does not require any communications from shareholders to the Commission's staff, the staff will always consider information concerning alleged violations of the statutes and rules administered by the Commission, including arguments as to whether or not activities proposed to be taken would violate the statute or rule involved. The receipt by the staff of such information, however, should not be construed as changing the staff's informal procedures and proxy review into a formal or adversarial procedure.

It is important to note that the staff's no-action responses to Rule 14a-8(j) submissions reflect only informal views. The determinations reached in these no-action letters do not and cannot adjudicate the merits of a company's position with respect to the proposal. Only a court such as a U.S. District Court can decide whether a company is obligated to include shareholder proposals in its proxy materials. Accordingly, a discretionary determination not to recommend or take Commission enforcement action does not preclude a proponent, or any shareholder of a company, from pursuing any rights he or she may have against the company in court, should the company's management omit the proposal from the company's proxy materials.

Benjamin Partners
589 Broadway
New York, NY 10012
(212) 334-8700

Blair Axel
General Counsel
baxel@benjaminpartners.com

February 26, 2018

Via e-mail (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Cerus Corporation
Stockholder Proposal of Michael Salzhauer

Dear Ladies and Gentlemen:

On behalf of Michael Salzhauer (the "Proponent"), this will respond briefly to Chadwick L. Mills' letter dated February 21, 2018, replying to our February 12, 2018, letter opposing the request of Cerus Corporation (the "Company") for a no-action letter regarding Proponent's shareholder proposal (the "Proposal"). As explained below, the Company very much wants to exclude this Proposal, but still has not justified preventing the shareholders from considering it.

Counsel for the Company is distorting Proponent's plain language, and feigning an inability to understand, by claiming that Proponent's statement that the Company "belongs to be part of a larger firm" does not mean a sale or merger of the Company or a similar extraordinary transaction. Counsel is fanciful in suggesting that such language means Proponent wants the Company "to increase its size." Proponent's statement does not say or suggest that. As we pointed out in our February 12, 2018, letter, the Company cannot have it both ways. It cannot claim "part of a larger firm" is too general yet at the same time accuse Proponent of seeking to "micro-manage" the Company's ordinary business transactions.

The Company's comment regarding *Allegheny Valley Bancorp, Inc.* (available January 3, 2001), is inapposite. In *Allegheny,* the SEC allowed the shareholder proposal which sought retention of an investment bank to solicit offers for the purchase of the Bank's stock or assets. The Company says Proponent lacks similar specificity. Yet as stated earlier, Proponent does not seek involvement in the details of a change of control transaction, and he properly left how to seek a sale/merger to the Board's discretion. The Company should not now be allowed to require Proponent to specify how he believes a sale/merger should be implemented. Nor does Proponent desire to dictate any such details to the Board, as long as it pursues an extraordinary change of control transaction.

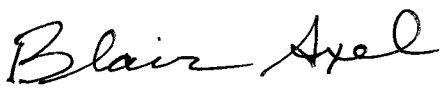
Proponent Should be Permitted to Amend the Proposal If There is Any Doubt

The Company says Proponent should not be permitted to amend the Proposal because it was not received before the "submission deadline [which] was December 29, 2017". However, attached is the Company's January 8, 2018, letter to Proponent which opens by stating that the Company "on December 26, 2017 received a stockholder proposal from you (the 'Proposal')". Also attached is our cover e-mail sending the Proposal to the Company, which shows it was sent on December 26, 2017 at 6:25 pm. There is no bar to an amendment.

More fundamentally, if there were any doubts, Proponent should be permitted to amend under Staff Legal Bulletin No. 14B (September 15, 2004) ('SLB 14B"). If requested by the Staff, Proponent would state that the Board's consideration of "strategic alternatives" should be limited to a sale or merger of the Company or a similar extraordinary transaction only which results in a change of control. To meet the Company's cavils, Proponent would state expressly that he is not making any proposal regarding the Company's ordinary business operations, because it is Proponent's belief that no change in the realm of ordinary business affairs by the Company's current management will avoid the critical risks to shareholders described in Proponent's statement. These small additions could hardly be called a material alteration of the Proposal. Because the Proposal relates to nothing less than the independence of the Company, what is being proposed is simple, and would not require more than simple amendments, if any.

It is respectfully requested that the Company's request for a no-action letter be denied, and that Proponent Proposal and statement, amended if the Staff deems it appropriate, be included in the Company's 2018 proxy materials. We would be happy to provide any further assistance, and can be contacted directly at (212) 334-8725.

Very truly yours,



Blair Axel

Attachments

cc: Michael Salzhauer
Chadwick L. Mills, Esq.
Crystal Menard, Cerus Corporation

CERUS

January 8, 2018

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Michael Salzhauer
589 Broadway
New York, NY 10012

Re: Stockholder Proposal

Dear Mr. Salzhauer:

I am writing on behalf of Cerus Corporation ("***Cerus***"), which on December 26, 2017 received a stockholder proposal from you (the "***Proposal***") for inclusion in Cerus' proxy materials for its 2018 Annual Meeting of Stockholders (the "***2018 Annual Meeting***").

As set forth below, the Proposal contains certain procedural deficiencies that, pursuant to the rules and regulations of the Securities and Exchange Commission (the "***SEC***"), we are required to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), provides that a stockholder proponent must submit sufficient proof that it has continuously held at least $2,000 in market value, or 1%, of a company's securities entitled to be voted on the proposal at the meeting for at least one year as of the date that the proposal was submitted. To date, Cerus has not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to Cerus. In this regard, we are in receipt of the letter, dated December 26, 2017, from Cowen Prime Services LLC ("***CPS***") purporting to verify that as of December 26, 2017, you held sufficient shares of Cerus' common stock to permit the submission of the Proposal. We note, however, that the information provided by you was not sufficient because CPS is not a Depository Trust Company ("***DTC***") participant and does not appear to be an affiliate of a DTC participant listed in DTC's security position listing for Cerus as of December 26, 2017. In addition, Cerus' stock records do not indicate that CPS or you are registered owners of Cerus' shares.

To remedy this defect, you must submit sufficient proof that you have continuously held at least $2,000 in market value, or 1%, of Cerus' securities entitled to be voted on the Proposal at the 2018 Annual Meeting for the entire one-year period preceding and including December 26, 2017. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the "record" holder of your shares (usually a broker or bank) verifying that, at the time you submitted your Proposal, you continuously held the required number or amount of shares of Cerus' common stock for the one-year period preceding and including December 26, 2017; or

2. if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of shares of Cerus' common stock as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number of shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the DTC, a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.pdf. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If your broker or bank is a DTC participant, or an affiliate of the DTC participant through which your Cerus shares are held, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Cerus shares for the one-year period preceding and including December 26, 2017.

2. If your broker or bank is not a DTC participant and is not an affiliate of the DTC participant though which your Cerus shares are held, then you need to submit proof of ownership from the DTC participant through which your shares are held verifying that you continuously held the required number or amount of Cerus shares for the one-year period preceding and including December 26, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker or bank is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining or submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 26, 2017, the required number or amount of Cerus shares were continuously held: (a) one from your broker or bank confirming your ownership, and (b) the other from the DTC participant confirming the broker or bank's ownership.

In addition to the procedural deficiency noted above, Rule 14a-8(b) of the Exchange Act requires a stockholder proposal proponent to provide a written statement that such proponent intends to continue ownership of the required number or amount of shares through the date of the Company's annual meeting. Your written statement included in your letter to Cerus dated December 26, 2017 that you intend to continue to hold "my Cerus shares beyond the date of the 2018 shareholders meeting" is not adequate to confirm that you intend to hold the required

CERUS

number or amount of shares through the date of the 2018 Annual Meeting. To remedy this defect, you must submit a written statement that you intend to continue holding at least $2,000 in market value, or 1%, of Cerus' shares through the date of the 2018 Annual Meeting.

The SEC's rules require that a response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date that you receive this letter. Please address any response to me at 2550 Stanwell Drive, Concord, California 94520. Alternatively, you may transmit any response by email to me at CMenard@cerus.com.

For your reference, I have enclosed copies of Rule 14a-8 of the Exchange Act, Staff Legal Bulletin No. 14, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14G.

If you have any questions with respect to the foregoing, please contact me at (925) 288-6042 or via email at CMenard@cerus.com. In addition, we welcome a dialogue with you to discuss the issues raised by the Proposal and we thank you for your interest in Cerus.

Sincerely,

Cerus Corporation

Chrystal Menard
Chief Legal Officer and General Counsel

cc: Blair Axel (baxel@benjaminpartners.com)

Enclosures

Blair Axel

From: Blair Axel
Sent: Tuesday, December 26, 2017 6:25 PM
To: ir@cerus.com
Cc: Michael Salzhauer
Subject: Shareholder Proposal for 2018 Proxy
Attachments: Cerus Signed Letter.pdf; SNY599-21-C17122611511.pdf; edocument.pd.pdf; edocument.pd.pdf

Mr. Lee –

I represent Michael Salzhauer, a Cerus shareholder for several years. I left several phone messages last week and today regarding the attached letter to Cerus requesting the inclusion of a proposal in the Company's proxy materials for the 2018 shareholder meeting. The attached are also being sent to the Board via Federal Express. As this is time-sensitive, please confirm receipt ASAP and acknowledge that all is in order for the inclusion of this proposal in the 2018 proxy materials. I may be reached at the number below. Thank you.

Blair Axel

Encs.

Blair Axel
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Cooley

Chadwick L. Mills
+1 650 843 5654
cmills@cooley.com

February 21, 2018

1934 Act/Rule 14a-8

VIA E-MAIL (*shareholderproposals@sec.gov*)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Cerus Corporation
Stockholder Proposal of Michael Salzhauer

Dear Ladies and Gentlemen:

By our letter dated February 6, 2018 (the "***No-Action Request***"), our client Cerus Corporation, a Delaware corporation (the "***Company***"), requested confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), the Company excludes the shareholder proposal (the "***Proposal***") and supporting statement (the "***Supporting Statement***") submitted by Michael Salzhauer (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Stockholders (the "***2018 Proxy Materials***"). By letter dated February 12, 2018, through his counsel, the Proponent sent a response to the No-Action Request to the Staff (the "***Proponent's Response***"). This letter is being sent to supplement the No-Action Request and to respond to erroneous statements made in the Proponent's Response.

Pursuant to Rule 14a-8(j) under the Exchange Act, we have submitted this letter to the Commission via email at shareholderproposals@sec.gov. A copy of this submission is being sent simultaneously to Proponent via email.

I. PROPONENT MAY NOT RELY ON EXPLANATIONS PRESENTED IN PROPONENT'S RESPONSE TO RECTIFY WEAKNESSES IN THE PROPOSAL OR SUPPORTING STATEMENT

The crux of Proponent's Response rests upon the erroneous belief that Proponent can rectify the weaknesses in his Proposal and Supporting Statement by relying on the explanations and clarifications set forth in Proponent's Response. Not only does Proponent's Response fail to adequately address the fundamental issues with the Proposal, the explanations and clarifications regarding what he intended to convey in the Proposal and Supporting Statement do not, and cannot be used to, modify or explain the Proposal for the benefit of the stockholders who are expected to vote on it, or the members of the Board of Directors who are expected to implement it.

The Proposal states as follows:

"It is requested that Cerus now begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value."

As we discuss in the No-Action Request, the Staff has repeatedly permitted the omission of similar proposals, including the following:

- *Anchor Bancorp, Inc.* (July 11, 2013):

  "RESOLVED: that the shareholders of Anchor Bancorp ("ANCB" or the "Company"), hereby recommends that the Board of Directors (the "Board") consider engaging the services of a nationally-recognized investment banking firm to evaluate available strategic alternatives to maximize shareholder value, including, but not limited to a sale of the Company as a whole, merger, or other transaction for all or substantially all of the assets of the Company, in a manner that is consistent with applicable regulatory restrictions and requirements including obtaining consent from the Washington State Department of Financial Institutions, as needed.

- *Analysts International, Inc.* (March 11, 2013):

  "RESOLVED: That the shareholders of Analysts International Corporation (the "Company"), represented at the annual meeting in person and by proxy, hereby request that the Board of Directors of the Company immediately engage the services of an investment banking firm to evaluate alternatives that could enhance shareholder value including, but not limited to, a merger or sale of the Company, and the shareholders further request that the Board take all other steps necessary to actively seek a sale or merger of the Company on terms that will maximize share value for shareholders."

- *Donegal Group, Inc*. (February 15, 2013) ("*Donegal Group*"):

  "RESOLVED: That the shareholders of DGI, assembled at the annual meeting in person and by proxy, hereby request that the Board of Directors immediately engage the services of an investment banking firm to evaluate alternatives that could enhance shareholder value including, but not limited to, a merger or outright sale of DGI, and the shareholders further request that the Board take all other steps necessary to actively seek a sale or merger of DGI on terms that will maximize share value for shareholders."

- *Central Federal Corporation* (March 8, 2010):

  "RESOLVED, that Central Federal Corporation ("CFBK") shareholders request that the Board of Directors (1) appoint a committee of independent, non-management directors with authority to explore strategic alternatives for maximizing shareholder value, including the sale or merger of CFBK, (2) instruct the committee to retain a leading investment banking

> firm to advise the committee about strategic alternatives, and (3) authorize the committee and investment banker to solicit offers for the sale or merger of CFBK."

With respect to each of the above no-action requests, the Staff responded with the following:

> "There appears to be some basis for your view that [the company] may exclude the proposal under rule 14a-8(i)(7), as relating to [the company's] ordinary business operations. In this regard, we note that the proposal appears to relate to both extraordinary transactions and non-extraordinary transactions. Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary transactions and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7)."

It should also be noted that Proponent relies on a 17 year old no-action letter, *Allegheny Valley Bancorp, Inc.* (January 3, 2001) ("*Allegheny*"), as support for permitting inclusion of the Proposal. However, Allegheny is not relevant to the No-Action Request, as the proposal at issue in Allegheny differs significantly from the Proposal. In particular, the Allegheny proposal requested that the board of directors "retain an investment bank to solicit offers for the purchase of the Bank's stock or assets" and "within 120 days from the date of the approval of these Resolutions… present the highest cash offer to purchase the Bank's stock or assets to the shareholders for their acceptance or rejection of such offer." The Allegheny proposal never refers to "strategic alternatives for maximizing shareholder value," the language used in Proponent's Proposal. Rather, it refers only to the solicitation of "offers for the purchase of the Bank's stock or assets," a specific form of extraordinary transaction. The proponent in Donegal Group cited Allegheny in support of its request that its proposal be included in Allegheny's proxy statement in letters to the Staff dated January 4, 2013, February 18, 2013 and February 21, 2013. The Staff did not find the reference to Allegheny persuasive, instead expressing its view that the proposal in Donegal Group was excludable and finding no basis for reconsideration of its position. Notably, the Proponent's Response does not cite as precedent in its favor any no-action letters that actually include the term "strategic alternatives".

As we discuss in more detail in the No-Action Request, a plain reading of the Proposal, both on its own and taken together with the Supporting Statement, suggests that the term "strategic alternatives" as used in the Proposal could refer to any number of potential actions by the Company, nearly all of which are well short of the sale or merger of the Company. Neither the text of the Proposal nor the Supporting Statement limit the term "strategic alternatives" to, or in fact even mention, the sale or merger of the Company. Proponent claims that the phrase "[b]eing essentially a one product company, Cerus ultimately belongs to be [sic] part of a larger firm with economies of scale," which appears in the Supporting Statement, supports his claim that only a sale or merger of the Company is contemplated by the Proposal. However, as we discuss in the No Action Request, there are many methods a company may use to increase its size or obtain economies of scale, most of which involve ordinary business activities well short of the sale or merger of the company. Proponent's statement in Proponent's Response that a "plain reading of the Proposal and the accompanying statement show a sale or merger transaction is the only matter suggested" (emphasis added) is clearly false. Neither of the words "sale" or "merger" even *appears* in the Proposal or the Supporting Statement. That may have been what Proponent *intended* to say, but that is not what the Proposal and Supporting Statement *actually* say.

In addition, the fact that Proponent must repeatedly explain and expand on what Proponent means to say in the Proposal and Supporting Statement supports the Company's position that the language of the Proposal and Supporting Statement are "so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to

determine with any reasonable certainty exactly what actions or measures the proposal requires" (Staff Legal Bulletin No. 14B (CF) (September 15, 2004). The Proposal should therefore be excludable under Rule 14a-8(i)(3).

For the reasons stated above and in the No-Action Request, the Company believes the Proposal may be properly omitted in reliance on Rule 14a-8(i)(7). The Staff has repeatedly recognized that a proposal that seeks to enhance shareholder value by means of a non-extraordinary transaction, or that relates to both extraordinary transactions (i.e. the sale or merger of a company) and non-extraordinary transactions, is excludable under Rule 14a-8(i)(7) as relating to a company's "ordinary business operations." In addition, the Proposal is properly excludable under Rule 14a-8(i)(3) because the Proposal fails to define key terms relevant to its own implementation and, as a result, the Proposal is so broad and indefinite that neither the Company's stockholders nor the members of the Company's Board of Directors would be able to determine with reasonable certainty what the resolution requires.

II. PROPONENT SHOULD NOT BE PERMITTED TO REVISE THE PROPOSAL

Proponent states that he would be willing to "make reasonable word changes" if requested by the Staff, stating that "small modifications" would "meet the Company's complaints." However, Staff Legal Bulletin No. 14F, Item D.1 states that proponents do not have a right to make revisions to their proposals and supporting statements once they have been submitted unless the revised proposal or statement is received before the company's submission deadline. The Company's submission deadline was December 29, 2017, and as a result the Company is not required to accept any revisions to the Proposal and Supporting Statement unless they are requested specifically by the Staff.

We do not believe the Staff should permit the Proponent to modify the Proposal or the Supporting Statement. The Staff has a long-standing policy of not permitting shareholders to revise overly-broad shareholder proposals once it becomes apparent that they would be excludable under Rule 14a-8(i)(7) because they address "ordinary business operations." Also, while we are aware that the Staff often affords proponents the opportunity to correct false and misleading statements that would otherwise be excludable under Rule 14a-8(i)(3), there are limits to this policy. In particular, the Staff may permit a proponent to make revisions that are minor in nature and do not alter the substance of the proposal (Staff Legal Bulletin No. 14.E.1). Any changes sufficient to resolve the defects in the Proposal under Rule 14a-8(i)(3) would result in a "material alternation" of the Proposal – in fact, essentially a full rewriting of the Proposal – and therefore a new proposal altogether. Accordingly, we believe that the Proposal is properly excludable in its entirety and the Proponent should not be afforded an opportunity to revise the Proposal.

III. THE COMPANY HAS NOT WAIVED ITS RIGHT TO SEEK EXCLUSION OF THE PROPOSAL

Finally, Proponent erroneously states that the Company has waived its substantive objections to the inclusion of the Proposal in its 2018 Proxy Materials because the Company did not raise these objections in its letter to Proponent dated January 8, 2018. However, that letter was required to address only certain procedural deficiencies in Proponent's proof of eligibility to submit a proposal to the Company for inclusion in the 2018 Proxy Materials under Rule 14a-8(b). As required by Rule 14a-8(f), the Company provided timely notice to Proponent of these procedural and eligibility deficiencies, which Proponent then corrected. The last sentence of Rule 14a-8(f) makes clear that the Company's January 8, 2018 letter was so limited by stating that "If the Company intends to exclude the proposal, it will later have to make a submission under Rule 14a8 and provide you with a copy under Question 10 below." The process for

Cooley

excluding a proposal on substantive grounds is clearly independent of the process for addressing eligibility and procedural matters.

Proponent does not appear to appreciate the distinction between the procedural matter of demonstrating a stockholder's eligibility to submit a proposal under Rule 14a-8(b), and the determination as to whether the specific proposal at issue satisfies the substantive requirements of Rule 14a-8. Rule 14a-8(i) sets forth the *other* bases on which a company may rely to exclude a proposal from its proxy statement, *after* a proponent has complied with the applicable procedural requirements. If Proponent had been unable to demonstrate eligibility under Rule 14a-8(b), we would not then reach the question as to whether the Proponent's Proposal may be excluded from the 2018 Proxy Materials under one of the grounds set forth in Rule 14a-8(i). Requesting proof of eligibility under Rule 14a-8(b) does not waive the Company's rights with respect to exclusion of a proposal on substantive bases under Rule 14a-8(i).

IV. CONCLUSION

Based upon the foregoing analysis and the No-Action Request, we respectfully request that the Staff concur that it will not recommend enforcement action to the Commission if the Company excludes the Proposal and Supporting Statement from its 2018 Proxy Materials.

We would be happy to provide additional information and answer any questions that you may have regarding this subject. If we can be of further assistance in this matter, please do not hesitate to contact me at (650) 843-5654.

Sincerely,

Chadwick L. Mills

cc: Michael Salzhauer
Blair Axel
Chrystal Menard, Cerus Corporation

Benjamin Partners
589 Broadway
New York, NY 10012
(212) 334-8700

Blair Axel
General Counsel
baxel@benjaminpartners.com

February 12, 2018

Via e-mail (shareholderproposals@sec.gov)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Cerus Corporation
Stockholder Proposal of Michael Salzhauer

Dear Ladies and Gentlemen:

On behalf of Michael Salzhauer ("Proponent"), this is submitted in response to Chadwick L. Mills' letter dated February 6, 2018, requesting that the SEC Division of Corporate Finance permit Cerus Corporation (the "Company") to exclude Proponent's shareholder proposal (the "Proposal") from the Company's 2018 proxy materials. As explained below, neither Rule 14a-8(i)(7) or Rule 14a-8(i)(3) permit the Company to exclude the Proposal.

Introduction: The Proposal requests that the Company's Board begin an orderly process to explore "strategic alternatives." The statement accompanying the Proposal states Proponent's view that the Company "belongs to be a part of a larger firm" and explains specific risks to the Company if it remains independent. That explanation, plus the widely understood meaning of the phrase "strategic alternatives" makes it clear the Proponent requests that the Board consider selling or merging the Company or entering into a similar extraordinary transaction. The Company's no-action request pretends not to understand the Proposal and tries to argue that a transaction such as selling the Company is a "day-to-day" matter involving the ordinary business of the Company. This is disingenuous. It is plain that management does not want shareholders to consider whether or not the Company should remain independent. Under Rule 14a-8, the Company has the burden to prove the Proposal must be excluded, and the Company has failed to carry its burden.

The Company has waived the objections it makes now for the first time: On January 8, 2018, the Company wrote Proponent with two specific requests for clarification of Proponent's December 26, 2017, proposal. The Company requested additional proof of share ownership and objected to the adverb used re Proponent's holding his shares. On January 22, 2018, Proponent timely satisfied the Company's requests. On January 8, 2018, the Company should have but did not give notice of the defects it alleges now. Although as shown below there is no need to remedy the

alleged defects, this is not a case where a claimed deficiency cannot be remedied. The Company's new argument that the Proposal is ill-worded could be cured, if any revisions are needed. As such, it was improper not to give notice then of the defects now being claimed, which have therefore been waived by the Company.

The Proposal is Not Properly Excludable under Rule 14a-8(i)(7): The Company says the Proposal relates to its "ordinary business operations". However, whether the Company seeks to be acquired by or merge with another firm, or enter into a similar change in control deal, in all such cases it would be an extraordinary transaction. There can be no transaction less "day-to-day" than the sale of an independent company, which can happen once only. The Proposal requests no more than that the Board consider such a strategic alternative to remaining independent.

Although the Company says the Proposal relates to both ordinary and extraordinary business matters, a plain reading of the Proposal and the accompanying statement show a sale or merger or similar transaction is the only matter suggested. This is the polar opposite of a "non-extraordinary transaction" The statement's mention of the Company's intellectual property was solely to show Proponent's view that the slow pace of exploiting that IP creates a serious risk that competing technology could render worthless the Company's main asset. However, the Proponent deliberately offered no suggestion or proposal whatever as to how to exploit or handle the Company's assets, or in any way to alter the Company's management of its day-to-day business. The Proposal says only that the Board should consider selling/merging the Company in light of the existential threat that Proponent described in his statement.

The Company's letter wholly misses the point by suggesting Proponent seeks to "micro-manage" the Company. The Proposal speaks only in non-mandatory terms and expressly leaves it to the Board's judgment to determine what advisors to retain, how to structure and empower a committee of independent directors to evaluate strategic alternatives, what deal structure to pursue, what type of acquirer/partner firm should be encouraged, and how to conduct the process with potential partners. The Proposal does not even request the sale or merger of the Company – rather only that the Board begin a process to consider a dispositive transaction. The Proposal respects the prerogative of the Board to manage this and all other matters affecting the Company. Indeed, it is possible that following the Board's consideration it could conclude that a sale or combination at this time is not in the best interests of the shareholders.

In view of the single purpose underlying the Proposal, the Rulings the Company cites do not justify excluding the Proposal. In *Central Federal Corporation*, *Anchor Bancorp*, *Donegal Group, Inc.*, and *Analysts International Corporation*, the Staff found the proposals at issue involved both ordinary and extraordinary business matters, unlike the Proposal here. As explained above, Proponent carefully avoids day-to-day matters which he acknowledges are the Board's to manage. The Company's intellectual property asset was mentioned in Proponent's accompanying statement but not anywhere in the Proposal, precisely because managing that asset is not the subject of the requested action.

It is significant that Company's letter does not site *Allegheny Valley Bancorp, Inc.* (available January 3, 2001). The proposal at issue in *Allegheny* sought to direct the company's Board to hire an investment bank for the purpose of soliciting offers for the purchase of the bank's stock or assets. The Staff determined the proposal could not be excluded. Such a transaction was central to the future of the company and was not a day-to-day matter which a shareholder could be prevented from raising with other shareholders. Indeed, the proposal in *Allegheny*, unlike the Proposal here,

had specifics requesting what the Board explore and how, arguably opening the shareholder to a charge of seeking to micro-manage. Yet the staff ruled the proposal should not be excluded. The same result is proper here.

Shareholder proposals have been allowed where they raise matters basic to the shareholders' rights and their investments, even where the issue is not the essential independence of the company, as in *Allegheny*. See, e.g., *Alexion Pharmaceuticals, Inc.* (March 15, 2017) (management could not exclude proposal relating to executive compensation, in face of argument that proposal related to ordinary management of company affairs); *Acuity, Brands, Inc.* (October 12, 2016) (proposal related to dividend policy considered "outside the realm of Acuity Brands' ordinary business operations" was not excluded under Rule 14a-8(i)(7)).

The Proposal is Not Properly Excludable under Rule 14a-8(i)(3):

The Company says the Proposal is vague and indefinite. Rule 14a-8(i)(3) serves to prevent "materially false or misleading statements" in proxy materials, but was not designed exclude proposals where managements "assert deficiencies in virtually every line of a proposal's supporting statement as a means to justify exclusion of the proposal in its entirety." Staff Legal Bulletin No. 14B (September 15, 2004) ('SLB 14B"). Since SLB 14B, the "inherently vague or indefinite" objection has become a token catch-all used by managements almost reflexively regardless of the simplicity or clarity of the proposal. Despite the Company's effort to muddy the waters here, the Proposal is straight-forward and understandable.

As explained above, the Proponent's accompanying statement makes clear the Proposal seeks a sale, merger or other transaction that results in the Company becoming "part of a larger firm." This does not merely implicate "strategic direction" as the Company argues. The term "shareholder value" is used only in the context of a sale, merger or similar dispositive transaction as discussed above. Indeed, the company concedes (Cooley letter at 4) that a proposal requesting that management "take specific steps in connection with an extraordinary business transaction (i.e. the sale or merger of a company" to maximize shareholder value, . . . generally are not excludable."

Although a change in control transaction may be structured different ways, in the judgment of the Company, it is perhaps the most fundamental deal a company can do and can be understood by shareholders as such without confusion. The Staff has specifically rejected Rule 14a-8(i)(3) objections where the proposed corporate matter is arguably more complex than a sale/merger of the company. *See, e.g., Netflix, Inc.* (March 13, 2017) (proposal to change the plurality vote standard for the election of directors); *salesforce.com, inc.* (March 16, 2016) (Rule 14a-8(i)(3) challenge rejected where proposal related to equity awards in the event of a change of control.) The claimed "risk of shareholder confusion" was greater in those instances than here.

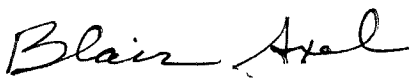
In fact, the Company seeks to have it both ways: On the one hand it says a proposal must "address essential aspects of its own implementation" (Mills letter at 6), and says the proposal is therefore "vague". Yet at the same timed the Company complains that the Proponent is too specific and seeks to "micro-manage" the Company's affairs. (*Id.* at 2). Proponent, mindful of Rule 14a-8(i)(7), left how to seek a sale/merger to the Board's discretion. In light of that proper respect for the powers and duties of the Board, the Company cannot be heard to demand that Proponent should specify how he believes a sale/merger should be implemented.

In short, the Company's objections are so broad that they could be used to exclude virtually any proposal that seeks to have a company explore a sale, merger, or similar change of control transaction. That is bad policy and that is not the law.

While the Proposal is Clear, Proponent Would Make Reasonable Word Changes if Requested: The Staff can permit a proponent to amend a proposal to cure possible indefinite terms. SLB 14B. As shown above, that is not necessary here, and Proponent does not wish the Proposal to be so specific as to impinge on the Board's business judgment and discretion. Nonetheless, if the Staff deems it appropriate Proponent would make small modifications to the Proposal and/or the accompanying statement to meet the Company's complaints. For example, Proponent could add non-exclusive specificity to the "advisors" the Company should retain, or suggest non-exclusive specific steps the Company should take toward a sale or merger. While the Proposal is clear, Proponent could reiterate that the "strategic alternatives" requested are only a sale/merger or similar change in control transaction, and do not relate to any non-extraordinary business matter.

For the reasons set forth above, it is requested that the Company be denied a no-action letter with respect to the Proposal.

Very truly yours,



Blair Axel

cc: Michael Salzhauer
Chadwick L. Mills, Esq.
Crystal Menard, Cerus Corporation

Cooley

Chadwick L. Mills
+1 650 843 5654
cmills@cooley.com

February 6, 2018

1934 Act/Rule 14a-8

VIA E-MAIL (*shareholderproposals@sec.gov*)

Office of Chief Counsel
Division of Corporation Finance
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Cerus Corporation
Stockholder Proposal of Michael Salzhauer

Dear Ladies and Gentlemen:

We submit this letter on behalf of our client Cerus Corporation, a Delaware corporation (the "***Company***"), which requests confirmation that the staff (the "***Staff***") of the Division of Corporation Finance of the U.S. Securities and Exchange Commission (the "***Commission***") will not recommend enforcement action to the Commission if, in reliance on Rule 14a-8 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), the Company omits the enclosed shareholder proposal (the "***Proposal***") and supporting statement (the "***Supporting Statement***") submitted by Michael Salzhauer (the "***Proponent***") from the Company's proxy materials for its 2018 Annual Meeting of Stockholders (the "***2018 Proxy Materials***").

Pursuant to Rule 14a-8(j) under the Exchange Act, we have:

- filed this letter with the Commission no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Copies of the Proposal and Supporting Statement, the Proponent's cover letter submitting the Proposal, and all relevant correspondence relating to the Proposal are attached hereto as Exhibit A. Please note that we have not included copies of the Proponent's personal brokerage account statements and Form 13F, which were provided to the Company in connection with the Proponent's initial correspondence and the Proponent's response to the Company's notice of deficiency under Rule 14a-8(b).

Pursuant to the guidance provided in Section F of Staff Legal Bulletin 14F (October 18, 2011), we ask that the Staff provide its response to this request to Chadwick Mills, on behalf of the Company, via email at cmills@cooley.com or via facsimile at (415) 693-2222 and to the Proponent via email at michael@benjaminpartners.com.

Rule 14a-8(k) and Section E of Staff Legal Bulletin 14D (November 7, 2008) provide that shareholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent elects to submit any correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should be furnished concurrently to the undersigned on behalf of the Company.

I. SUMMARY OF THE PROPOSAL

On December 26, 2017, the Company received a letter from the Proponent containing the Proposal for inclusion in the Company's 2018 Proxy Materials. The Proposal reads as follows:

> "It is requested that Cerus now begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value."

II. EXCLUSION OF THE PROPOSAL

A. Basis for Excluding the Proposal

As discussed more fully below, the Company believes it may properly omit the Proposal from its 2018 Proxy Materials (1) in reliance on Rule 14a-8(i)(7), as the Proposal deals with matters relating to the Company's ordinary business operations and (2) in reliance on Rule 14a-8(i)(3), as the Proposal is impermissibly vague and indefinite so as to be inherently misleading.

B. The Proposal May Be Omitted in Reliance on Rule 14a-8(i)(7), As It Relates To The Company's Ordinary Business Operations

The Proposal may be properly omitted in reliance on Rule 14a-8(i)(7) because the Staff has repeatedly recognized that a proposal that seeks to enhance shareholder value by means of a non-extraordinary transaction, or that relates to both extraordinary transactions (i.e. the sale or merger of a company) and non-extraordinary transactions, is excludable under Rule 14a-8(i)(7) as relating to a company's "ordinary business operations."

Rule 14a-8(i)(7) permits a company to omit from its proxy materials a shareholder proposal that relates to the company's "ordinary business operations." According to the Commission, the underlying policy of the ordinary business exclusion is "to confine the resolution of ordinary business problems to management and the board of directors, since it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." *Exchange Act Release No. 40018, Amendments to Rules on Shareholder Proposals*, [1998 Transfer Binder] Fed Sec. L. Rep. (CCH) 86,018, at 80,539 (May 21, 1998) (the "*1998 Release*"). In the 1998 Release, the Commission described the two "central considerations" for the ordinary business exclusion. The first is that certain tasks are "so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight." The second consideration relates to "the degree to which the proposal seeks to 'micro-manage' the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment." *Id*. at 86,017-18 (footnote omitted).

A corporation's board of directors (and its management under the supervision of the board) has the authority to conduct the ordinary business of the corporation, and is in the best position to evaluate the corporation's business prospects and assess what is in the best interests of its stockholders. Maximizing the value of a corporation is one of the primary goals of the board of directors of a for-profit corporation, and monitoring and assessing the value of a corporation is an ongoing responsibility of a corporation's board of directors. Consistent with its obligations under Delaware law, the Company's Board of Directors (the "*Board*") routinely considers and implements business strategies and oversees the management of the Company, including but not limited to considering the engagement of, and engaging, advisors to aid the Company in increasing stockholder value. Furthermore, pursuant to Section 141(a) of the Delaware General Corporation Law (the "DGCL"), "the business and affairs of every [Delaware] corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may otherwise be provided (under other provisions of the DGCL) or in its certificate of incorporation." Thus, in the absence of a provision reserving power to the stockholders in the certificate of incorporation or a provision of the DGCL directing or requiring that stockholders take action, the directors, rather than the stockholders, manage the business and affairs of a Delaware corporation. The Company's certificate of incorporation contains no reservation by the stockholders of the power or duty to manage the Company's business and affairs.

The Staff has taken the position that proposals relating to the determination and implementation of a company's business strategies are matters relating to the conduct of the company's ordinary business. Accordingly, the Staff has consistently allowed companies to exclude proposals under Rule 14a-8(i)(7) that in substance seek to have the board of directors retain the services of an independent third party for the general purpose of evaluating "strategic alternatives," even where some of the proposed "strategic alternatives" are of an extraordinary nature. For example, in *Central Federal Corporation* (March 8, 2010) ("*Central Federal*"), the Staff concluded that "the Proposal appears to relate to both extraordinary transactions and non-extraordinary transactions. Proposals concerning the exploration of strategic alternatives for maximizing stockholder value which relate to both extraordinary transactions and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7)." The Staff, therefore, stated it would not recommend enforcement action to the Commission if the company omitted the proposal from its proxy materials.

More recently, in *Anchor Bancorp* (July 11, 2013) ("*Anchor*"), the Staff concurred with the exclusion of a proposal that "request[ed] that the board consider engaging the services of an investment banking firm to evaluate alternatives to "maximize shareholder value, including, but not limited to a sale of the Company as a whole, merger or other transaction for all or substantially all of the assets of the Company."" The Staff concluded that proposal appeared to relate to both extraordinary and non-extraordinary transactions, and stated that "Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7)."

Similarly, in *Donegal Group Inc.* (February 16, 2012) ("*Donegal Group*"), the Staff concurred with the exclusion of a proposal that requested that the company's board appoint an independent board committee and retain a leading investment banking firm "to explore strategic alternatives to maximize shareholder value, including consideration of a merger of DMIC [the company's mutual insurance business] with another mutual insurer followed by the sale or merger of DGI", and that the board "authorize the committee and investment banking firm to solicit and evaluate offers for the merger of DMIC followed by the sale or merger of DGI." The company argued that, under Delaware law, the general enhancement of shareholder value is a matter squarely within the exclusive authority of the company's board of directors (citing *Revlon, Inc.* v. *MacAndrews & Forbes Holdings. Inc.,* 506 A.2d 173 (Del. 1986) for the proposition that the board of directors "has no more

fundamental duty than seeking to maximize the value of the corporation for the benefits of its stockholders"). The company also argued that though the final clause of the resolution could arguably relate to the solicitations and evaluations for a merger and subsequent sale or merger, it does not narrow the scope of the previous request, "which remain[s] exclusively related to the ordinary business obligations of [the company's] board of directors." The Staff agreed, stating that the "proposal appears to relate to both extraordinary transactions and non-extraordinary transactions," and noting further that "Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7)."

Further, in *Analysts International Corporation* (March 11, 2013) ("*Analysts*"), the Staff concurred with the exclusion of a proposal that "request[ed] that the Board of Directors of the Company immediately engage the services of an investment banking firm to evaluate alternatives that could enhance shareholder value including, but not limited to, a merger or sale of the Company, and the shareholders further request that the Board take all other steps necessary to actively seek a sale or merger of the Company on terms that will maximize share value for shareholders." The company in Analysts argued that the enhancement of shareholder value is an ordinary business matter associated with the management and board of public companies. Although the company admitted that the final clause of the proposal implicated an extraordinary transaction, it argued that the proposal still fell directly within the Staff's guidance that "Proposals concerning the exploration of strategic alternatives for maximizing shareholder value which relate to both extraordinary and non-extraordinary transactions are generally excludable under rule 14a-8(i)(7)" (citing *Donegal Group*). The Staff agreed and the proposal was excluded.

See also, e.g., *Bristol-Myers Squibb Company* (February 22, 2006) (allowing the exclusion of a proposal under Rule 14a-8(i)(7) that urged the board to "retain a nationally recognized investment bank to explore strategic alternatives to enhance the value of the [c]ompany, including, but not limited to, a possible sale, merger or other transaction" as it related to both extraordinary and non-extraordinary transactions); *Medallion Financial Corp.* (May 11, 2004) (concurring with the exclusion of a proposal that requested that an investment banking firm be engaged to evaluate alternatives to maximize shareholder value including a sale of the company as excludable under Rule 14a-8(i)(7) because the proposal appeared to relate to both extraordinary and non- extraordinary transactions).

Because proposals that focus on a company's strategic direction are within the province of its board of directors, the Staff has generally determined that these types of proposals relate to a company's ordinary business operations. The Staff, however, has drawn a distinction under Rule 14a-8(i)(7) between proposals that seek to reinforce management's general obligation to maximize shareholder value, which proposals are generally excludable, and those that direct management to take specific steps in connection with an extraordinary business transaction (i.e. the sale or merger of a company) to maximize shareholder value, which generally are not excludable.

The Proposal directs the Company to retain advisors to "seriously study strategic alternatives and empower a committee of its independent directors to evaluate those alternatives… to maximize shareholder value." The phrase "strategic alternatives" is vague and the Proposal does not limit it to, or even define it to include, extraordinary transactions. While an extraordinary transaction, such as the sale of the Company, could be considered one possible "strategic alternative," it is by no means the only "strategic alternative" available to the Company. The Board and management of the Company could contemplate any number of alternative strategies to maximize shareholder value, through any number of actions well short of an extraordinary corporate transaction. For example, these strategies could include, among others:

- the acquisition or divestiture of intellectual property or other assets related to current or potential products or product candidates;
- the in-licensing or out-licensing of intellectual property related to current or potential products or product candidates;
- equity investments in other companies;
- joint ventures with other companies or institutions;
- partnerships or collaborations with other companies or institutions;
- pursuing new research and development opportunities;
- expanding, modifying or pursuing additional internal development efforts related to potential or existing products and product candidates;
- adopting new strategies related to the regulatory approvals related to the Company's product candidates or potential products;
- adopting new strategies related to the sale and marketing of the Company's product or product candidates; or
- the acquisition of some or all of the assets or equity of other companies.

All of these possible business strategies relate to non-extraordinary, ordinary business transactions. They include areas within the Board's and management's responsibilities relating to the day-to-day management of the Company and its operations and assessment and implementation of the Company's business strategies, which clearly relate to the Company's ordinary business. In fact, the Board regularly reviews and evaluates the Company's business strategies and those strategies' likely impact on increasing stockholder value, and the Company frequently engages advisors to assist it in assessing its business strategies.

It should be noted that the final clause in each of the proposals that are the subject of *Central Federal*, *Anchor*, *Analysts* and *Donegal* explicitly provides that "strategic alternatives" includes the sale or merger of the company, a transaction that has historically been considered an "extraordinary transaction." However, a similar clause is absent in the Proposal at issue in this request. Instead, the term "strategic alternatives" is never explained, defined or limited in any way. As a result of the inherent vagueness of this term, it is unclear whether the Proposal is even meant to include extraordinary transactions. Instead, the Proposal could be viewed as relating only to ordinary matters of business strategy. In addition, the proposals at issue in *Central Federal*, *Anchor*, *Analysts* and *Donegal* all propose that the subject company engage an investment banking firm. The Proposal at issue in this request states only that the Company should consider "retaining advisors" without explaining or limiting the term "advisors", making it even less clear whether the "strategic alternatives" at issue even includes extraordinary transactions.

As the Proposal addresses the Company's general business strategies and non-extraordinary transactions, it relates to the Company's ordinary business operations. Accordingly, the Company believes that the Proposal is properly excludable under Rule 14a-8(i)(7).

C. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal Is Impermissibly Vague And Indefinite So As To Be Inherently Misleading

Under Rule 14a-8(i)(3), a proposal may be excluded if the resolution or supporting statement is contrary to any of the Commission's proxy rules or regulations. The Staff has consistently taken the view that shareholder proposals that are "so inherently vague or indefinite that neither the shareholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires" are materially false and misleading. Staff Legal Bulletin No. 14B (CF) (September 15, 2004). See also *Dyer v. SEC*, 287 F.2d 773, 781 (8th Cir. 1961) ("[I]t appears to us that the proposal, as drafted and submitted to the company, is so vague and indefinite as to make it impossible for either the board of directors or the stockholders at large to comprehend precisely what the proposal would entail.").

Consistent with this guidance, the Proposal is properly excludable. The Proposal fails to define key terms relevant to its own implementation and, as a result, the Proposal is so broad and indefinite that neither the Company's stockholders nor the members of the Board would be able to determine with reasonable certainty what the resolution requires.

The Staff has consistently concurred in the exclusion of proposals that fail to define key terms. See e.g., *Wendy's International Inc.* (February 24, 2006) (permitting exclusion of a proposal where the term "accelerating development" was found to be unclear); *Peoples Energy Corporation* (November 23, 2004) (permitting exclusion of a proposal where the term "reckless neglect" was found to be unclear); and *Exxon Corporation* (January 29, 1992) (permitting exclusion of a proposal regarding board member criteria because vague terms were subject to differing interpretations).

A proposal may also be vague, and thus materially misleading, when it fails to address essential aspects of its own implementation. For example, the Staff has allowed the exclusion of several executive compensation proposals where a crucial term relevant to implementing the proposal was insufficiently clear. *See The Boeing Company* (March 2, 2011) (concurring with the exclusion of a proposal requesting, among other things, that senior executives relinquish certain "executive pay rights" because the proposal did not sufficiently explain the meaning of the phrase); *General Electric Company* (January 21, 2011) (proposal requesting that the compensation committee make specified changes was vague because, when applied to the company, neither the stockholders nor the company would be able to determine exactly what actions or measures the proposal required); and *General Electric Company* (January 23, 2003) (proposal seeking an individual cap on salaries and benefits of one million dollars failed to define the critical term "benefits" or otherwise provide guidance on how benefits should be measured for purposes of implementing the proposal).

The Proposal provides that the Board of Directors "begin an orderly process of retaining advisors to seriously study strategic alternatives." However, as we state in Section B above, the Proposal does not explain what is meant by "strategic alternatives." Furthermore, the Proponent's supporting statement does not clarify how the Proponent intends that term to be understood in the Proposal. The supporting statement states that "[b]eing essentially a one product company, Cerus ultimately belongs to be [sic] part of a larger firm with economies of scale." However, there are many methods a company may use to increase its size

or obtain economies of scale. Nor is "strategic alternatives" a term with a specific meaning in the investment or financial community such that a stockholder or member of the Board of Directors of the Company would have any reasonable idea of how to implement the Proposal. In fact, it is likely that different stockholders and members of the Board would interpret the term in significantly different ways.

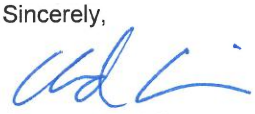
In addition, as we describe in Section B above, the term "advisors" is not defined or limited in the Proposal. The term "advisors" could refer to outside consultants, attorneys or accountants, among others. The supporting statement provides no insight as to how the term "advisors" should be understood. It is not even clear whether "advisors" must be third parties, or whether employees of the Company could serve this function.

Because essential terms of the Proposal are not defined within the Proposal and have no clear generally understood meaning, neither stockholders voting on the Proposal nor the Company in implementing the Proposal would know with any degree of certainty what actions are being proposed or should be taken. Accordingly, the Company believes that the Proposal is properly excludable under Rule 14a-8(i)(3).

III. CONCLUSION

For the reasons discussed above, the Company believes that it may properly omit the Proposal and Supporting Statement from its 2018 Proxy Materials in reliance on Rule 14a-8. As such, we respectfully request that the Staff concur with the Company's view and not recommend enforcement action to the Commission if the Company omits the Proposal and Supporting Statement from its 2018 Proxy Materials. If we can be of further assistance in this matter, please do not hesitate to contact me at (650) 843-5654.

Sincerely,



Chadwick L. Mills

Attachments

cc: Michael Salzhauer
Blair Axel
Chrystal Menard, Cerus Corporation

EXHIBIT A

THE PROPOSAL AND RELATED CORRESPONDENCE

Michael Salzhauer
589 Broadway
New York, NY 10012
(212) 334-8700

December 26, 2017

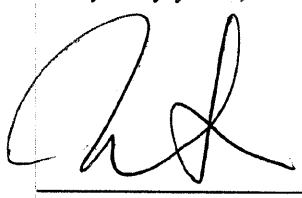
Via e-mail and Federal Express

Board of Directors
Cerus Corporation
2550 Stanwell Drive
Concord, California 94520.

To the Board of Directors:

I have been a Cerus shareholder for several years. I request that the attached proposal and statement be included in the Company's 2018 proxy materials and that the proporal be raised at the Company's 2018 annual meeting. Enclosed is proof of my ownership of Cerus shares for more than the past year. I intend to continue to hold my Cerus shares beyond the date of the 2018 shareholders meeting and I agree to attend the shareholders meeting.

Very truly yours,



Michael Salzhauer

Encs.

cc: Blair Axel, Esq.

PROPOSAL and STATEMENT:

Despite having an important and needed product with many applications, Cerus Stockholders have experienced significant erosion in the value of their shares. The Company operates at a loss, and more losses are foreseen by consensus estimates. Cerus' management has for many years failed to show that it can achieve both regulatory clearance and the sales push-through necessary to monetize its intellectual property. This situation has persisted for a number of years. As this continues, the possibility grows that a competing technology could enter the market, and in that scenario the Company's strategy of slow progress could result in minimal or no value to Cerus shareholders. This would be cataclysmic for Company shareholders and employees. Being essentially a one product company, Cerus ultimately belongs to be a part of a larger firm with economies of scale which would provide benefits for Cerus' product in sales/marketing, product manufacture, distribution, and regulatory accomplishments.

In light of these facts, I put forward the following nonbinding proposal to the Board of Directors: It is requested that Cerus now begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value.

COWEN

December 26, 2017

To whom it may concern:

As of December 26, 2017, Michael Salzhauer held and has held continuously for at least one year in excess of 15,750 common shares of Cerus Corp. (CERS). These shares have throughout this period been valued in excess of $2,000. Attached are Cowen account statements dated November 2017 and November 2016 showing such ownership, which continues to date.

Neil Shaughnessy
Managing Director

Cowen Prime Services LLC
1010 Franklin Avenue
Suite 303
Garden City, NY 11530
www.cowen.com

From: Michael Salzhauer <michael@benjaminpartners.com>
Sent: Monday, January 8, 2018 3:15 PM
To: Chrystal Menard
Cc: Blair Axel
Subject: Re: Notice of Deficiency

Chrystal
Thank you for this notice. I am speaking with Obi tomorrow. We believe that we have made a reasonable submission. I will discuss this with Blair and we will be back to you shortly.

Michael Salzhauer
O 212-334-8710
C 917-309-5389

On Jan 8, 2018, at 6:04 PM, Chrystal Menard <CMenard@cerus.com> wrote:

> Dear Mr. Salzhauer—
>
> This email is to acknowledge receipt of your proposal for inclusion in Cerus' proxy materials for our 2018 Annual Meeting of Stockholders. Although we are acknowledging receipt of your communication, please see the attached notice setting forth the deficiencies in your submission.
>
> Notwithstanding the deficiencies, we value the input of all of our stockholders and have discussed your communication with our Board.
>
> Best,
>
> Chrystal
>
> CERUS
>
> Chrystal Menard | Chief Legal Officer and General Counsel
> Cerus Corporation | 2550 Stanwell Drive | Concord, CA 94520
> e: cmenard@cerus.com | o: (925) 288-6042 | f: (925) 288-6278 | www.cerus.com

<Salzhauer - 2018.01.08 - Notice of Deficiency.pdf>

CERUS

January 8, 2018

VIA ELECTRONIC MAIL AND FEDERAL EXPRESS

Michael Salzhauer
589 Broadway
New York, NY 10012

Re: Stockholder Proposal

Dear Mr. Salzhauer:

I am writing on behalf of Cerus Corporation ("***Cerus***"), which on December 26, 2017 received a stockholder proposal from you (the "***Proposal***") for inclusion in Cerus' proxy materials for its 2018 Annual Meeting of Stockholders (the "***2018 Annual Meeting***").

As set forth below, the Proposal contains certain procedural deficiencies that, pursuant to the rules and regulations of the Securities and Exchange Commission (the "***SEC***"), we are required to bring to your attention.

Rule 14a-8(b) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"), provides that a stockholder proponent must submit sufficient proof that it has continuously held at least $2,000 in market value, or 1%, of a company's securities entitled to be voted on the proposal at the meeting for at least one year as of the date that the proposal was submitted. To date, Cerus has not received adequate proof that you have satisfied Rule 14a-8's ownership requirements as of the date that the Proposal was submitted to Cerus. In this regard, we are in receipt of the letter, dated December 26, 2017, from Cowen Prime Services LLC ("***CPS***") purporting to verify that as of December 26, 2017, you held sufficient shares of Cerus' common stock to permit the submission of the Proposal. We note, however, that the information provided by you was not sufficient because CPS is not a Depository Trust Company ("***DTC***") participant and does not appear to be an affiliate of a DTC participant listed in DTC's security position listing for Cerus as of December 26, 2017. In addition, Cerus' stock records do not indicate that CPS or you are registered owners of Cerus' shares.

To remedy this defect, you must submit sufficient proof that you have continuously held at least $2,000 in market value, or 1%, of Cerus' securities entitled to be voted on the Proposal at the 2018 Annual Meeting for the entire one-year period preceding and including December 26, 2017. As explained in Rule 14a-8(b) and in SEC staff guidance, sufficient proof must be in the form of:

1. a written statement from the "record" holder of your shares (usually a broker or bank) verifying that, at the time you submitted your Proposal, you continuously held the required number or amount of shares of Cerus' common stock for the one-year period preceding and including December 26, 2017; or

2. if you have filed a Schedule 13D, Schedule 13G, Form 3, Form 4 and/or Form 5, or amendments to those documents or updated forms, reflecting your ownership of shares of Cerus' common stock as of or before the date on which the one-year eligibility period begins, a copy of the schedule and/or form and any subsequent amendments reporting a change in the ownership level and a written statement that you continuously held the required number of shares for the one-year period.

If you intend to demonstrate ownership by submitting a written statement from the "record" holder of your shares as set forth in (1) above, please note that most large U.S. brokers and banks deposit their customers' securities with, and hold those securities through, the DTC, a registered clearing agency that acts as a securities depository (DTC is also known through the account name of Cede & Co.). Under SEC Staff Legal Bulletin No. 14F, only DTC participants are viewed as record holders of securities that are deposited at DTC. You can confirm whether your broker or bank is a DTC participant by asking your broker or bank or by checking DTC's participant list, which is available at http://www.dtcc.com/~/media/Files/Downloads/client-center/DTC/alpha.pdf. In these situations, stockholders need to obtain proof of ownership from the DTC participant through which the securities are held, as follows:

1. If your broker or bank is a DTC participant, or an affiliate of the DTC participant through which your Cerus shares are held, then you need to submit a written statement from your broker or bank verifying that you continuously held the required number or amount of Cerus shares for the one-year period preceding and including December 26, 2017.

2. If your broker or bank is not a DTC participant and is not an affiliate of the DTC participant though which your Cerus shares are held, then you need to submit proof of ownership from the DTC participant through which your shares are held verifying that you continuously held the required number or amount of Cerus shares for the one-year period preceding and including December 26, 2017. You should be able to find out the identity of the DTC participant by asking your broker or bank. If your broker or bank is an introducing broker, you may also be able to learn the identity and telephone number of the DTC participant through your account statements, because the clearing broker identified on your account statements will generally be a DTC participant. If the DTC participant that holds your shares is not able to confirm your individual holdings but is able to confirm the holdings of your broker or bank, then you need to satisfy the proof of ownership requirements by obtaining or submitting two proof of ownership statements verifying that, for the one-year period preceding and including December 26, 2017, the required number or amount of Cerus shares were continuously held: (a) one from your broker or bank confirming your ownership, and (b) the other from the DTC participant confirming the broker or bank's ownership.

In addition to the procedural deficiency noted above, Rule 14a-8(b) of the Exchange Act requires a stockholder proposal proponent to provide a written statement that such proponent intends to continue ownership of the required number or amount of shares through the date of the Company's annual meeting. Your written statement included in your letter to Cerus dated December 26, 2017 that you intend to continue to hold "my Cerus shares beyond the date of the 2018 shareholders meeting" is not adequate to confirm that you intend to hold the required

CERUS

number or amount of shares through the date of the 2018 Annual Meeting. To remedy this defect, you must submit a written statement that you intend to continue holding at least $2,000 in market value, or 1%, of Cerus' shares through the date of the 2018 Annual Meeting.

The SEC's rules require that a response to this letter be postmarked or transmitted electronically no later than 14 calendar days from the date that you receive this letter. Please address any response to me at 2550 Stanwell Drive, Concord, California 94520. Alternatively, you may transmit any response by email to me at CMenard@cerus.com.

For your reference, I have enclosed copies of Rule 14a-8 of the Exchange Act, Staff Legal Bulletin No. 14, Staff Legal Bulletin No. 14F and Staff Legal Bulletin No. 14G.

If you have any questions with respect to the foregoing, please contact me at (925) 288-6042 or via email at CMenard@cerus.com. In addition, we welcome a dialogue with you to discuss the issues raised by the Proposal and we thank you for your interest in Cerus.

Sincerely,

Cerus Corporation

Chrystal Menard
Chief Legal Officer and General Counsel

cc: Blair Axel (baxel@benjaminpartners.com)

Enclosures

From: Chrystal Menard <CMenard@cerus.com>
Sent: Friday, January 19, 2018 10:47 AM
To: Blair Axel
Cc: Michael Salzhauer
Subject: Re: CERUS -- Salzhauer Shareholder Proposal

Hi Blair--

I received your voicemail last night. I am glad that Mr. Salzhauer and Obi were able to connect and that they had a productive call. Unfortunately, I am offsite today (and was yesterday as well) and am not monitoring my voicemail as a result.

That said, regarding how to respond to our notice, I tried to include all of the requirements necessitated by the regulations in my letter. Unfortunately, I can't give you advice on how to effectuate or interpret the regs as that would constitute legal advice.

Best,

Chrystal

Chrystal Menard | Chief Legal Officer and General Counsel
Cerus Corporation | 2550 Stanwell Drive | Concord, CA 94520
e: cmenard@cerus.com | o: (925) 288-6042 | f: (925) 288-6278 | www.cerus.com

Sent from my iPhone

On Jan 19, 2018, at 10:17 AM, Blair Axel <baxel@benjaminpartners.com> wrote:

> Chrystal –
>
> I left messages for you yesterday and earlier today but I have not heard back. We need to discuss what Pershing (the DTC holder of record) will provide. Please call. Thank you.
>
> Blair Axel
>
> Blair Axel
> General Counsel
> Benjamin Partners
> 589 Broadway
> New York, NY 10012
> (212) 334-8725
> baxel@benjaminpartners.com

From: Chrystal Menard [mailto:CMenard@cerus.com]
Sent: Monday, January 08, 2018 6:04 PM
To: Michael Salzhauer
Cc: Blair Axel
Subject: Notice of Deficiency

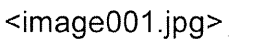
Dear Mr. Salzhauer—

This email is to acknowledge receipt of your proposal for inclusion in Cerus' proxy materials for our 2018 Annual Meeting of Stockholders. Although we are acknowledging receipt of your communication, please see the attached notice setting forth the deficiencies in your submission.

Notwithstanding the deficiencies, we value the input of all of our stockholders and have discussed your communication with our Board.

Best,

Chrystal



Chrystal Menard | Chief Legal Officer and General Counsel
Cerus Corporation | 2550 Stanwell Drive | Concord, CA 94520
e: cmenard@cerus.com | o: (925) 288-6042 | f: (925) 288-6278 | www.cerus.com

From: Blair Axel <baxel@benjaminpartners.com>
Date: January 22, 2018 at 10:54:08 PM GMT+1
To: "Chrystal Menard (CMenard@cerus.com)" <CMenard@cerus.com>
Cc: Michael Salzhauer <michael@benjaminpartners.com>
Subject: Shareholder Proposal for 2018 Proxy Materials

Crystal –

Attached is Michael Salzhauer's letter to CERS with the word changes you requested in your 1/8/18 letter. In addition, attached is a letter from Pershing, the DTC holder of record of Mr. Salzhauer's CERUS shares, stating he has continuously held in excess of $2,000 market value CERUS shares through and including the one year period prior to his letter to the Company.

While the attached letter from Pershing satisfies SEC requirements, attached is the following additional corroboration proving the required holdings for the period. Attached are Mr. Salzhauer's personal account statement for December 2017 (which was not available as of his initial letter, and you were sent last month his personal account statements for November 2016 and November 2017) and his IRA account statements for November 2016, November 2017 and December 2017. These show that both of Michael's personal account and his IRA account each have held more than the required CERUS shares through the relevant period. Please note these are all Pershing statements. We're told Pershing generates and sends these statements directly to account owners. They are available on the Pershing website. These statements state Pershing on every page, and state at the end that the securities are held by Pershing. The IRA statements are entitled Pershing "as custodian". Finally, attached is Michael Salzhauer's Form 13F, as filed with the SEC and with the SEC's receipt, which discloses the CERUS holdings for which he is responsible.

We trust the above satisfies the questions you raised. Thank you,

Blair Axel

Blair Axel
General Counsel
Benjamin Partners
589 Broadway
New York, NY 10012
(212) 334-8725
baxel@benjaminpartners.com

BNY MELLON | PERSHING

Christopher Lebenz
Vice President
Global Client Relationships
One Pershing Plaza
Jersey City, New Jersey 07399

T 201 413 2733
clebenz@pershing.com
pershing.com

January 22, 2018

Michael Salzhauer
589 Broadway FL 4
New York, NY 10012-3290

RE: Common Shares of CERUS Corporation (CUSIP: 157085101)

To whom it may concern:

Pershing LLC ("Pershing'), confirms that, for the period from December 26, 2016 through and including December 26, 2017, Pershing has continuously held in excess of $2,000 in market value of common shares of CERUS Corporation (CUSIP:157085101) (the "Securities") on behalf of Michael Salzhauer.

Pershing makes no representation with regard to holdings of the Securities for any period other than specified above.

Pershing understands that a copy of this letter will be delivered to CERUS Corporation.

PERSHING LLC

By: _____
Christopher Lebenz
Vice President

CUSIP: 157085101

Michael Salzhauer
589 Broadway
New York, NY 10012
(212) 334-8700

December 26, 2017

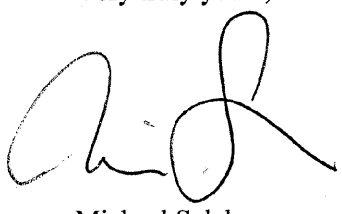
Via e-mail and Federal Express

Board of Directors
Cerus Corporation
2550 Stanwell Drive
Concord, California 94520.

To the Board of Directors:

I have been a Cerus shareholder for several years. I request that the attached proposal and statement be included in the Company's 2018 proxy materials and that the proposal be raised at the Company's 2018 annual meeting. Enclosed is proof of my ownership of Cerus shares for more than the past year. I intend to continue holding at least $2,000 in market value, or 1%, of Cerus' shares through the date of the 2018 Annual Meeting. I agree to attend the Annual Meeting.

Very truly yours,



Michael Salzhauer

Encs.

PROPOSAL and STATEMENT:

Despite having an important and needed product with many applications, Cerus Stockholders have experienced significant erosion in the value of their shares. The Company operates at a loss, and more losses are foreseen by consensus estimates. Cerus' management has for many years failed to show that it can achieve both regulatory clearance and the sales push-through necessary to monetize its intellectual property. This situation has persisted for a number of years. As this continues, the possibility grows that a competing technology could enter the market, and in that scenario the Company's strategy of slow progress could result in minimal or no value to Cerus shareholders. This would be cataclysmic for Company shareholders and employees. Being essentially a one product company, Cerus ultimately belongs to be a part of a larger firm with economies of scale which would provide benefits for Cerus' product in sales/marketing, product manufacture, distribution, and regulatory accomplishments.

In light of these facts, I put forward the following nonbinding proposal to the Board of Directors: It is requested that Cerus now begin an orderly process of retaining advisors to seriously study strategic alternatives, and empower a committee of its independent directors to evaluate those alternatives with advisors in exercise of their fiduciary responsibilities to maximize shareholder value.